Filed 3/29/19 In re H.M. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re H.M. et al., Persons Coming Under the Juvenile Court Law.	C087013
SACRAMENTO COUNTY DEPARTMENT OF CHILD, FAMILY AND ADULT SERVICES, Plaintiff and Respondent, v. C.M., Defendant and Appellant.	(Super. Ct. Nos. JD234084, JD234085, JD234086)

Appellant C.M., mother of the minors, purports to appeal from the juvenile court's orders entered at the 12-month review hearing. (Welf. & Inst. Code, §§ 366.21, 395.)[1]

[1] Further undesignated statutory references are to the Welfare and Institutions Code.

She contends the juvenile court erred in terminating her reunification services at that hearing; she also raises claims about happenings at earlier hearings.

Mother argues that the court erred by allowing certain evidence to be admitted at the jurisdiction/disposition hearing and failing to properly consider relative placement at the subsequent placement hearings. She adds that the Sacramento County Department of Child, Family and Adult Services (Department) did not supply certain information to the juvenile court at the jurisdiction/disposition hearing.

For reasons we explain, only the claim regarding orders entered at the 12-month review hearing is cognizable on this appeal, and we find no error in the termination of mother's services. Consequently, we affirm the orders of the juvenile court.

FACTUAL AND PROCEDURAL BACKGROUND

On December 19, 2016, section 300, subdivision (d) petitions were filed on behalf of minors H.M (born in 2006), Ho.M. (born in 2005), and F.M. (born in 2001), based upon multiple acts of sexual abuse against them by their mother's boyfriend, R.N. The petition further alleged that mother knew or should have known of the abuse but failed to protect the minors and permitted R.N. to continue to live in the home and have unsupervised access to the minors. The referral was received after F.M. disclosed the abuse to a mandated reporter. There had been a previous referral in 2013, when F.M. had disclosed abuse by R.N. to a mandated reporter but subsequently recanted.

The contested jurisdiction/disposition hearing was held on March 23, 2017. The petitions were amended to allege jurisdiction under both subdivisions (c) and (d) of section 300. The matter was argued by all counsel with no party calling witnesses. The juvenile court sustained the allegations of the petition, adjudged the minors dependent children of the court, and removed them from parental custody. R.N. was bypassed for reunification services under section 361.5, subdivision (b)(6), but services and therapeutic visitation were ordered for mother. Mother did not appeal from the disposition.

Therapeutic visits between mother and the minors began on April 4, 2017. Despite redirection, mother repeatedly engaged in inappropriate behavior during visits. Due to the therapist's inability to successfully redirect mother, the Department suspended visits in May 2017. A new therapist was assigned to monitor visits.

In a report dated July 7, 2017, the new therapist, Dr. Hayes, noted that mother was more concerned about her criminal case than her reunification services and had never expressed any concern about the sexual abuse her children had endured. She opined that mother was not fully receptive to redirection and was manipulative. Hayes concluded that mother was "clearly not ready for reunification counseling and is displaying behaviors that will have a negative impact and detriment to her children." Hayes later added that mother discouraged the minors from participating in anything therapeutic, as she was primarily worried how it would reflect on her, and that mother's behavior was more akin to that of a perpetrator than of a parent who had failed to protect her children.

Mother also completed a psychological evaluation in June 2017 with psychologist Dr. Larry Nicholas. He noted mother was "extremely guarded and defensive in her responses" during the evaluation and "attempted to portray herself in an overly positive light." Nicholas opined that mother's "inadequate monitoring and supervision of the children, which contributed to them being abused, was related to her desire to maintain her status quo with her partner and thereby overlook or discredit their reports." Nicholas noted that mother had benefitted little from the services already provided to her. He opined that she blamed others rather than accepted responsibility for the difficulties in her life and thus he could not recommend any specific services which were likely to be effective.

In a June 29, 2017 report, mother's counselor noted that mother continued to blame R.N. and Child Protective Services (CPS) for the trauma to her children and had not acknowledged her failure to protect or the secondary abuse that she had perpetrated.

On July 13, 2017, the juvenile court suspended mother's visits. Mother did not appeal from this postdisposition order.

On August 15, 2017, a search warrant revealed that in March and April of 2017 mother and F.M. had been communicating using the drafts folder in a secret e-mail account that mother had created. Mother encouraged F.M. to tell Ho.M. to recant or decline to testify. Mother's communications to F.M. were laced with threats and expletives that we do not repeat here, but also included: "The DA, they want info on R[.N.]. You ALL (u know what I mean) need to know that R[.N.] is looking at a long time if sis testifies." "Please let her know it will hurt R[.N.] for life & me. Don't say who it came from." Mother also wrote e-mails threatening F.M. if F.M. went certain places, wore certain clothes, or failed to obey mother's commands on other matters. She told F.M. to stop seeing the counselor at school. Mother wrote: "I need you to stop dealing with Julie Chase . . . I will fuck her up if I see her and that won't be good. You need to say . . . you hate her. I do not care why you feel the need to talk to her . . . STOP."

On August 17, 2017, mother was arrested for dissuading a victim or witness from testifying in violation of Penal Code section 136.1. At the arraignment on August 21, the criminal court issued a three-year no-contact order between mother and the minors.

The six-month review hearing in juvenile court took place on September 7, 2017. Despite mother's near completion of her case plan, her counseling report indicated her prognosis was poor and she had not assumed any accountability or ability to acknowledge the trauma she had caused the minors. Nonetheless, the juvenile court continued reunification services, including counseling, for mother. In doing so, however, the court found that "mother's contact with the children has been emotionally detrimental to them" and ordered no contact between mother and the minors. Mother did not appeal from that order.

Mother attended weekly counseling in January and February 2018. At the conclusion of these sessions, her therapist reported that mother "still maintains she did not see any signs of sexual abuse in her children or in her boyfriend at the time of the allegations . . . she has been unable to accurately assess the motives and behaviors her boyfriend was exhibiting (i.e. grooming behaviors, over enmeshment of boundaries, safety concerns, precautions) which are directly correlated with sexual abuse. After additional sessions with the client, it is still difficult to determine what [mother's] level of complicity in the abuse is." Due to mother's limited insight into her personal responsibility for her current situation, the therapist opined that additional therapy may not be productive.

On February 12, 2018, mother created a "Go Fund Me" Internet account to "[h]elp get [her] kids home!" who had been "taken by CPS" over a year ago. In doing so, she posted photos of the minors (obtained by F.M. at her request) and claimed the social worker was committing perjury to keep the minors from coming home.

The 12-month review hearing took place on April 13, 2018. The juvenile court found that there was no substantial probability of return of the minors to mother's custody within the 18-month timeframe designated by section 366.21, subdivision (g). The court also found: (1) mother had not visited the minors regularly due *solely* to mother's own actions which necessitated no-contact orders; (2) mother had not made significant progress in resolving the problems that led to the removal of the minors; and (3) mother did not demonstrate a capacity and ability to complete the objectives of her treatment plan. In making its findings, the court recounted much of mother's inappropriate behavior, including the inappropriate discussions during therapeutic visits, the illicit and manipulative contact with F.M. through the secret e-mail account, and the posting of information about the case on the Internet without regard for the minors' privacy.

Mother timely appealed from this hearing.

DISCUSSION

I

Lack of Jurisdiction

A. *Claim of Evidentiary Error at Disposition Hearing*

Mother contends the juvenile court erred in considering the dismissed failure to protect allegations filed in 2013 as evidence at the jurisdiction/disposition hearing in March 2017. She adds that the Department failed to inform the court of certain "crucial" facts, also at the jurisdiction/disposition hearing. But these claims are not cognizable in this appeal. Simply put, we lack jurisdiction to consider the propriety of happenings at the disposition hearing, which resulted in an appealable set of orders that were not timely appealed.

"A judgment in a proceeding under Section 300 may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment . . . ." (§ 395, subd. (a)(1).) " 'In a dependency proceeding the dispositional order constitutes a judgment.' " (*In re Megan B.* (1991) 235 Cal.App.3d 942, 950.) The notice of appeal must be filed "within 60 days after the rendition of the judgment or the making of the order . . . ." (Cal. Rules of Court, rule 8.406(a)(1); see *In re Markaus V.* (1989) 211 Cal.App.3d 1331, 1335-1336.)

Mother's notice of appeal, taken from the 12-month review hearing, was filed on April 13, 2018. Her appeal was not taken from, and is not timely as to, the March 23, 2017 jurisdiction/disposition hearing and resulting orders. Thus, we lack jurisdiction to address these claims. (*In re Megan B.*, *supra*, 235 Cal.App.3d at p. 950 ["appellate jurisdiction is dependent upon the filing of a timely notice of appeal"].)

Mother relies on *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 in contending she may challenge the evidence presented at the jurisdiction/disposition hearing for the first time on this appeal from the review hearing. But that case is inapposite. In *Blanca P.*, a three-year-old child claimed her father had sexually molested

her, and the juvenile court sustained a petition based on this allegation. The parents complied with the reunification plan, but denied any molestation had occurred, and their therapist opined they were telling the truth. (*Id*. at pp. 1741-1747.) The 18-month review hearing was held before a different judge and no evidence from the therapist was considered. (*Id*. at p. 1747.) The juvenile court found that returning the child to her parents would be detrimental, reasoning that the jurisdictional findings conclusively established that the molestation had occurred, thus the parents' continued denial in and of itself proved the reunification plan had failed. (*Ibid*.) The appellate court reversed, finding the parents' denial *alone* did not support a detriment finding, and fairness dictated the juvenile court consider the evidence of the father's innocence in determining detriment to return. (*Id*. at pp. 1752-1759.)

Here, the juvenile court did not prevent mother from challenging any evidence against her at the review hearing, nor did the court mistakenly consider determinations reached at the jurisdiction/disposition hearing to be incontrovertible. This case is nothing like *Blanca P.* Instead, in this case, mother attempts to argue error at an earlier hearing (from which she did not appeal) on appeal from a later hearing. As we have described, her argument of evidentiary error in March 2017 is not a procedurally permissible argument on this appeal from an April 2018 hearing. If mother truly has "new evidence" to present to the juvenile court, it must be brought to that court's attention by way of a section 388 petition for modification. (See, e.g., *In re H.S.* (2010) 188 Cal.App.4th 103.)

B. *Preferential Relative Placement*

Mother contends the juvenile court and the Department erred by failing to adhere to the statutory requirements for preferential relative placement of the minors, both in the minors' initial placement and when there were subsequent changes in placement. (§§ 319, 361:3.) Again, we lack jurisdiction to review these orders, as they were not timely appealed after they were entered.

The final changes in placement occurring prior to the filing of the April 13, 2018 notice of appeal here were on January 4, 2018 (F.M.) and February 8, 2018 (Ho.M. and H.M.). Thus, for the reasons we explained *ante*, mother's notice of appeal is not timely as to any of the contested placements and is not cognizable.[2]

II

Termination of Reunification Services

Parents of children over the age of three when removed from parental custody are generally limited to 12 months of reunification services from the date their child entered foster care. (§ 361.5, subd. (a)(1)(A).) To properly extend services beyond 12 months and up to 18 months from the date of initial removal, the juvenile court must find a substantial probability the minors will be returned and safely maintained in the home within that time *or* that reasonable services were not provided. (§§ 361.5, subd. (a)(3)(A), 366.22, subd. (b), 366.21, subd. (g)(1).) In order to find a substantial probability of return, the court must find the parent: (1) regularly visited the minors; (2) has made significant and consistent progress in resolving the problems that led to removal; and (3) has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the minors' safety and well-being. (§ 366.21, subd. (g)(1)(A)-(C).)

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[2] In any event, the challenge is moot. We grant the Department's request to take judicial notice of the juvenile court's December 13, 2018 order placing the minors with their maternal grandparents. (Evid. Code, §§ 452, subd. (d), 459; see *Finnie v. Town of Tiburon* (1988) 199 Cal.App.3d 1, 10 ["an action which originally was based upon a justiciable controversy cannot be maintained on appeal if the questions raised therein have become moot by subsequent acts or events"].) To the extent that the Department's request for judicial notice also seeks dismissal of the claim itself, we deny the motion as unnecessary.

We review the juvenile court's findings for substantial evidence, and the juvenile court's decision-making process based on those findings for abuse of discretion. (See *In re William B.* (2008) 163 Cal.App.4th 1220, 1229.)

A. *Reasonable Services -- Suspension of Visitation*

Mother contends there was insufficient evidence she received reasonable reunification services because visitation is a critical component of reunification and the juvenile and criminal courts entered orders prohibiting her from visiting or contacting the minors.

This argument amounts to a challenge to the juvenile and criminal courts' orders prohibiting visitation and contact with the minors; as such, it comes too late. (See *John F. v. Superior Court* (1996) 43 Cal.App.4th 400, 404-405.) As we have explained, neither the no-contact order nor the orders suspending visits were appealed or even challenged below.

" ' "The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them. . . ." ' " (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416.) "[A] parent [may not] wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing. [Citation.]" (*Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093.)

The record does not reflect that mother ever challenged the reasonableness of her services in the juvenile court; nor did she challenge the decisions prohibiting visitation. She cannot do so now.[3]

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[3] To the extent that mother attempts to raise a claim of ineffective assistance of counsel for failure to timely challenge the juvenile court's orders, argued for the first time in her

B. *Probability of Return*

In the one claim properly raised on this appeal, mother contends the juvenile court abused its discretion in declining to find a substantial probability of return. We disagree.

At the time of the review hearing, there were only two months left before the expiration of the 18-month period available for reunification. The evidence clearly supports the juvenile court's finding that reunification was not probable. Mother was prohibited by order of the criminal court from even contacting the minors. It was therefore impossible to return them to her custody. And even if that order were lifted, mother had not progressed to successful *therapeutic* visitation with the minors, let alone unsupervised visitation. There was simply no evidence even suggesting the minors could be returned to mother within the statutory timeframe.

Although mother argues error in the juvenile court's finding that she did not consistently and regularly visit the minors, claiming the court should have considered that she was prevented from doing so by court orders, the record reflects the juvenile court did, in fact, consider the orders and compared mother's case to other parents who had been prevented from visiting by circumstances beyond their control such as incarceration. The court found those cases distinguishable as mother's situation was brought on by findings of detriment to her children should she be permitted to contact them, including conduct in dissuading witnesses--her own children--from testifying against their abuser, that had resulted in criminal charges against mother. We cannot say this finding was error.

There was overwhelming evidence in this case to support the juvenile court's order terminating reunification services. No error appears.

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reply brief, this argument comes too late and is forfeited. (*Holmes v. Petrovich Development Co., LLC* (2011) 191 Cal.App.4th 1047, 1064, fn. 2.)

DISPOSITION

The orders of the juvenile court are affirmed.

/s/
Duarte, J.

We concur:

/s/
Mauro, Acting P. J.

/s/
Renner, J.